

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel.)	
State Engineer,)	
)	No. 69cv07941-BB
Plaintiffs)	
)	
v.)	
)	
ROMAN ARAGON, et al.,)	Rio Chama Adjudication
)	
Defendants)	Pueblo Claims Subproceeding 1

**EL RITO DITCH ASSOCIATION'S ANSWER
TO UNITED STATES' SUBPROCEEDING COMPLAINT**

PURSUANT TO THE Scheduling Order on Pueblo Claims [Docket No. 7639] entered on November 3, 2004, Defendant El Rito Ditch Association, comprised of Acequia Alires, Acequia Viterbo Alires, Acequia Duranes, Acequia Monte, Acequia Camino, Acequia Medio, Acequia Madre, Acequia Estero, Acequia Otra Vanda (a.k.a Acequia Trujillo), Acequia de la Plaza, and Acequia Jaral, through undersigned counsel, hereby answers the United States' Subproceeding Complaint [Docket No. 8609].

1. Defendant El Rito Ditch Association admits that Ohkay Owingeh is a federally recognized Indian tribe owing lands with the geographic scope of this adjudication. However, Defendant is without sufficient information or knowledge either to admit or deny that Ohkay Owingeh has made use of the waters of the Rio Chama stream system since time immemorial.

2. The El Rito Ditch Association is without sufficient information or knowledge either to admit or deny the allegation contained in Paragraph 2, and therefore denies the same.

3. The El Rito Ditch Association denies that the priority of Ohkay Owingeh's right to the specific uses set forth in the United States' subproceeding complaint is aboriginal, time immemorial or first priority, as stated in Paragraph 3 of the complaint.

4. The El Rito Ditch Association denies the allegations contained in Paragraph 4 of the complaint.

5. The El Rito Ditch Association is without sufficient information or knowledge either to admit or deny the allegations contained in Paragraph 5, and therefore denies the same.

6. The El Rito Ditch Association is without sufficient information or knowledge either to admit or deny the allegations contained in Paragraph 6, and therefore denies the same.

7. The El Rito Ditch Association is without sufficient information or knowledge either to admit or deny the allegations contained in Paragraph 7, and therefore denies the same.

8. The El Rito Ditch Association is without sufficient information or knowledge either to admit or deny the allegations contained in Paragraph 8 and therefore denies the same.

9. The El Rito Ditch Association is without sufficient information or knowledge either to admit or deny the allegations contained in Paragraph 9 and therefore denies the same.

10. The El Rito Ditch Association is without sufficient information or knowledge either to admit or deny the allegations contained in Paragraph 10 and therefore denies the same.

11. The El Rito Ditch Association denies the allegations contained in Paragraph 11.

First Affirmative Defense

The claims of the United States of America contained within its Subproceeding Complaint are barred by the Treaty of Guadalupe Hidalgo.

Second Affirmative Defense

The claims of the United States of America contained within its Subproceeding Complaint are barred by the laws and customs of the prior sovereigns of Spain and Mexico.

Third Affirmative Defense

The claims of the United States of America contained within its Subproceeding Complaint are barred by abandonment.

Fourth Affirmative Defense

The claims of the United States of America contained within its Subproceeding Complaint are subject to the requirement of application of water to beneficial use.

Fifth Affirmative Defense

The claims of the United States of America contained within its Subproceeding Complaint are barred by the doctrine of laches.

Sixth Affirmative Defense

The claims of the United States of America contained within its Subproceeding Complaint are barred to the extent that recognition of such claims would result in a violation of the Equal Protection Clause of the United States Constitution.

WHEREFORE, Defendant El Rito Ditch Association respectfully asks this Court to require the United States to approve all elements of the water rights that it claims on behalf of the Pueblo of Ohkay Owingeh and to adjudicate the water rights of the Pueblo of Ohkay Owingeh in accord with the laws, customs and judicial decisions of Spain, Mexico, the United States of America, and the Territory and State of New Mexico.

Respectfully submitted,

/s/ Mary E. Humphrey
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CERTIFICATE OF SERVICE

I certify that on the 1st day of June day, 2007 that I filed the foregoing document electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic filed, to be served via electronic mail.

I also certify that I served the following persons via electronic mail:

Tim Vollman at Tim_Vollman@hotmail.com

Lee Bergen at Lbergen@nativeamericanlawyers.com.

I further certify that I served the foregoing document on the following persons by U. S. mail:

/s/ Mary E. Humphrey

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